IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 328 OF 2001

Mahadu Soma Paradhi
convict No. C/11855
presently lodged at
Yerwada Central prison,
Pune, Maharashtra ...Appellant

Versus

The State of Maharashtra ...Respondent

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Shri. Vishwanath Talkute, Advocate, appointed for the Appellant

Smt. V.R. Bhosale, A.P.P. for Respondent-State.

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CORAM: N. V. DABHOLKAR AND
SMT. V.K. TAHILRAMANI, JJ.

DATED: 9TH JANUARY, 2006

ORAL JUDGMENT (PER DABHOLKAR, J.):-

1. Heard Mr. Vishwanath Talkute, advocate for the appellant and Mrs. Bhosale, the learned A.P.P. for State.

. By the judgment under Section 374(2) of the Code of Criminal Procedure, 1973, the appellant i.e. original accused challenges the judgment and order dated 12.2.2001 delivered by the III Additional

Sessions Judge, Thane in Sessions Case No. 419 of 1999. By the said case, the appellant was tried, held guilty and convicted for the offence punishable under Sections 302, 498-A of I.P.C. He is sentenced to suffer life imprisonment and R.I. for six months on respective counts which are to run concurrently. He is also imposed a fine of Rs.500/- on each count and the default sentence in case of non payment.

2. The incident in question took place on 15.6.1999 some time between 10.00 a.m. to 6.00 p.m. The victim of the incident namely Rahubai was the wife of the present accused. She was married to him about four years prior to the incident and at the material time, the couple was gifted with a daughter aged about one and half years. It is the contention of the prosecution that there was a dispute between the accused and the wife, mainly because of accused suspecting her character. On that count the accused frequently ill-treated wife Rahubai. Ultimately, a meeting was held with participation of respectable persons from both sides and the matter was settled, on assurance by the accused that he would not harass the wife in future, just about a fortnight prior to the alleged incident. Monsoon followed after this

compromise and the deceased Rahubai had come to the place of her father Laxman (P.W.1) at Alemal couple of days prior to 15.6.1999. Accused followed her after couple of days which can be calculated to be 14.6.1999. He had a night halt with father-in-law on that day. On the next morning after breakfast, Rahubai and accused left for their village. They were seen off by father-in-law who offered Gunny bag of onion and some vegetables and an amount for bus fare of the couple.

. At about 6.00 p.m. on the same day i.e. on 15.6.1999 one Ashok Mahale (uncle of the complainant) approached the complainant and informed the complainant that the appellant-accused had murdered Rahubai in the forest of village Zap (place of accused). Upon such intimation, the complainant himself, Ashok, Balu, Shantaram and others went to the forest. They saw dead body of Rahubai. She had suffered injuries to her head, neck and chest. Her right ear was partly cut.

. It is the claim of the complainant that thereafter they proceeded to the place of accused. They saw that the accused was wearing clothes which were blood

stained. He was in a frightened condition and on enquiry accused confessed that he had killed Rahubai in the forest, because of suspicion about character of his wife. Laxman lodged a report with Jawhar police station at 00.15 hours of 16.6.1999 which set the investigation in motion.

. After completion of investigation, charge sheet was filed in the Court of J.M.F.C. Jawhar and after committal, the trial has ended and the appellant came to be convicted as mentioned hereinabove.

3. From the statement under Section 313 of Cr.P.C. 1973 and the tenor of the cross examination of the prosecution witnesses, the defence of the accused is that of total denial. He has generally answered all the questions by saying "it is false" or "I do not know about it". However, he replied concluding two questions with some elaboration. According to him his father-in-law (complainant Laxman) is a big landlord and therefore, an influential person. The father-in-law desired that the accused should work in the field owned by his father-in-law. Since the accused turned down his proposal, there was a quarrel. Therefore, his father in law and all his

relatives falsely implicated him. He has also added that Rahubai had been to forest for collecting firewood and she suffered death as a result of fall on a stone. According to the accused, this was narrated to him by Sakharam.

4. Heard Advocate Shri. Talkute and the A.P.P. Smt. Bhosale.

. As rightly argued by Mr. Talkute, advocate for the appellant, the case is based on circumstantial evidence, as there is no eye witness to the incident. The trial court has considered the following five circumstances as a complete chain linking the accused to the offence;

i) Last scene together with the victim; (Evidence of Laxman)

ii) Blood stains on the clothes of the accused (arrest panchanama and deposition of witnesses);

iii) Extra judicial confession of the accused (evidence of P.Ws.1 to 4)

iv) Attempt on the part of accused to commit suicide (arrest panchanama and medical evidence);

v) Motive i.e. suspicion against the character of wife/victim Rahubai;

5. In order to firmly establish the circumstances on record, the prosecution has placed reliance on the evidence of as many as seven witnesses. P.W.1 Laxman, P.W.3 Shantaram Pathare, who is the uncle of Laxman and P.W.4 Balu Mahale, brother of Laxman, rendered identical evidence about having learnt regarding death of Rahubai, all of them having proceeded to the location where dead body was lying and thereafter, to the village of the accused where they saw the blood stained clothes worn by the accused and they heard the extra judicial confession by the accused. P.W.2 Sakharam is the Sarpanch of village Zap i.e. the place of the accused he claimed to have accompanied the complainant Laxman to the location where dead body was lying. He has also rendered evidence regarding having seen the blood

stained clothes upon the person of the accused and having heard extra judicial confession of the accused but his evidence is seriously challenged by the defence in view of variance between his evidence on one side and that of P.Ws.1, 3 and 4 on the other.

. Dr. Ashima Chabra (P.W.5) had carried out post mortem of the dead body. She has also clinically examined the accused and has noticed abrasion over his neck at the anterior side admeasuring about 9 c.m. This was on 16.6.99. P.W.6 Rasik Shaikh is the panch witness, he was present when the arrest of the accused was effected and blood stained clothes on his person were seized, relevant panchanama is at Exh.25. Complaint at Exh.15, Post mortem report at Exh.8, Inquest panchanama at Exh.7 and spot panchanama at Exh.6 are other supporting documents. Although it appears that clothes seized from the person of deceased, as also from the person of the accused were sent to the Forensic Laboratory, report of the analysis is not available on record.

6. The trial Court in its judgment para 7 to 10 has considered evidence of father Laxman, the stories of ill-treatment allegedly narrated by Rahubai to him

and evidence regarding the meeting held between respectable persons from both sides and finding the same to be reliable, the same is held to be sufficient to establish the offence punishable under Section 498-A of I.P.C. Eventually, we are unable to agree with the learned Sessions Judge on this count.

. The cruelty as contemplated by Section 498-A and which is punishable under the said provision is defined by the explanation to the said provision. Harassment at the hands of husband or the relatives of the husband in two types of situation would attract Section 498-A. One circumstance is when such harassment psychologically drives the woman/wife to commit suicide and secondly when such harassment is aimed at pressurising the wife and her relatives to satisfy illegal demands of the husband or his relatives. In the matter at hands, the prosecution itself has come with a case that the husband was harassing the wife, because he suspected her character. The prosecution has not come with a case that as a result of harassment or ill-treatment Rahubai committed suicide. In the fact situation of the case as propounded by the prosecution neither of the clauses as contained in explanation to Section

498-A are attracted and therefore, even if we are to believe the prosecution evidence without any deduction still offence under Section 498-A of I.P.C. cannot be substantiated.

. Moreover, as a result of observations of the Hon'ble Supreme Court in the matter of **Gananath Pattnaik Vs. State of Orissa, (2002) 2 SCC 619,** the evidence regarding statement by the deceased of illtreatment/harassment at the hands of husband is not admissible piece of evidence so far as the charge under Section 498-A of I.P.C. The Supreme Court observed thus;-

> " The statement of the deceased's sister was taken on record with the aid of Section 32 of the Evidence Act at a time when the appellant was being tried for the offence under Section 304-B and such statement was admissible under Section 32(1) as it related to the cause of death of the deceased and the circumstances of the transaction which resulted in her death. Such a statement is not admissible in evidence for the offence punishable under Section 498-A IPC and has to be termed as only a hearsay evidence. Section 32 is an exception to the hearsay rule and deals with the statements or declarations by a person, since dead, relating to the cause of his or her death or the circumstances leading to such death. If a statement which otherwise is covered by the hearsay rule does not fall within the exceptions of Section 32 of the Evidence Act, the same cannot be relied upon for finding the guilt of the accused."

. In the matter at hands since the prosecution has not come with a case that Rahubai committed suicide being fed up of the ill-treatment nor it has come with a case that her death is unnatural thereby attracting Section 304-B of I.P.C., the evidence regarding ill-treatment at the hands of husband based upon narration by deceased Rahubai to her father does not come within the purview of Section 32(1) of I.P.C. since such ill-treatment or harassment is not cause of the death.

. We must, therefore, say that there is no legal evidence on record that can substantiate the charge for offence under Section 498-A of I.P.C., the appellant, therefore, would succeed in the appeal to that extent.

7. So far as the charge of murder is concerned, the prosecution has relied upon five circumstances which we have already narrated in para 4 ante. Advocate Shri. Talkute has taken us through entire evidence as also the impugned judgment and he submitted that the trial Court has placed heavy reliance on the extra judicial confession and more particularly the

evidence of P.W.2 Sakharam on that count. According to advocate Shri. Talkute, extra judicial confession by itself cannot be sufficient foundation for recording the conviction. Otherwise also he submitted that the evidence of Sakharam when read in the light of evidence of P.W.1 Laxman, P.W.3 Shantaram and P.W.4 Balu can be seen to be unreliable. According to advocate Shri. Talkute, the remaining circumstances are weak circumstances.

. We are aware of the parameters laid by the Hon'ble Apex Court in the matters wherein the prosecution case is based on circumstantial evidence. The prosecution is required to establish each and every circumstance with firmness by cogent evidence and all the circumstances together are expected to form a complete chain between the crime and culprit, ruling out every other hypothesis except the guilt of the accused.

. So far as the "last seen together," the evidence of Laxman alone is the evidence, but we are unable to find any fault or reason for disbelieving the evidence of Laxman that on 15.6.99 he, the accused and Rahubai departed together from his house.

According to the learned advocate Shri. Talkute, this piece of evidence is a very weak circumstance, because the father has seen the couple departing either from the residence of father or from the bus station at the place of the father. It was submitted that the prosecution ought to have brought on record some evidence of the accused and the victim having proceeded towards the forest and since such evidence is not available on record, according to learned advocate; the prosecution has not established the circumstance "last scene together" with requisit firmness.

. We are unable to agree with the submission of the learned advocate. The distance between the village of accused and that of the complainant is about 7 to 8 kilometres. The father has not deposed that he confirmed that the couple boarded the bus. It is not known whether the couple travelled by bus or after departing from the place of father-in-law the accused forced his wife to walk down the distance. Until the defence brings on record, either by evidence led by itself, or by admission in the prosecution evidence that the victim (alive) and the accused were seen together by someone else, at some other location and

at some subsequent point of time, the evidence rendered by Laxman is the evidence of last scene together. If the evidence of Laxman is seen, he had learnt about death of Rahubai at about 6.00 p.m.. According to evidence of Sakharam who is Sarpanch of village of accused, the death was caused by about 3.00 p.m.. Thus, there is time gap hardly of three to four hours between departure of the couple from the place of the complainant and possible time of death of Rahubai. The argument of learned advocate that the evidence of Laxman is not the evidence regarding having seen the couple together soon before the death, is therefore, not sustainable.

. The blood stains on the clothes of the accused are brought on record through oral evidence of relatives of the complainant and the panch witnesses. The same are recorded in the panchanama at Exh.25. No doubt, by not obtaining the report from Chemical Analyser (although the articles were sent to the Forensic Laboratory), the prosecution will be handicapped to claim that the blood stains seen on the clothes of the accused were the stains of the blood of the victim. This is because neither the blood group of victim is determined nor the blood stains on the

clothes of the accused are found to be of matching blood group. The submission of advocate Shri. Talkute that this is a weak circumstance, is therefore, justifiable to some extent. On reference to the statement of the accused under Section 313 of Cr.P.C. 1973, the learned trial Judge has drawn attention of the accused to the fact that his clothes were blood stained as deposed by panch witness Shaikh. Eventually, because accused offers no explanation for the same, the circumstance although weak, is capable of pointing out a finger of strong suspicion towards the accused. This is because accused was found wearing blood stained clothes soon after his wife was killed.

. No doubt, the prosecution story that the accused attempted to commit suicide is some what imagination, by inference. This is because upon clinical examination, the accused was found having a weal mark around his neck, admeasuirng 9 c.m. in length (P.W.5 Dr. Chabra). This circumstance throws light upon the subsequent conduct of the accused as influenced by the fact in issue and is therefore, relevant. However, that the accused attempted to commit suicide is an imagination and therefore, this circumstance is

also a weak circumstance.

. So far as the motive is concerned, the defence just cannot deny that the accused had motive to kill his wife. Laxman has deposed at length that the accused used to suspect the character of Rahubai, and used to beat her. He was questioned by the relatives and yet he was unable to name anybody with whom Rahubai could be alleged to be maintaining illicit relations. Thus, it seems that the bad character of Rahubai was illusion created by Laxman himself, but the matter did not end there. The dispute which arose because of such suspicion was required to be settled by calling a meeting of respectable persons from both sides. Such meeting was held just a fortnight preceding the alleged incident. In fact some admissions supporting this theory of the prosecution are also obtained by the defence during the course of cross examination of Laxman. He has admitted that, during four years of martial life, his daughter frequently visited his house. He had questioned Rahubai about suspicion held by the accused and even Rahubai was unable to name any individual as a person about whom accused was suspecting of Rahubai maintaining illicit relations.

Thus, the fact that accused was having some suspicion about the character of the deceased and on that count there was unhappiness in the relationship of husband and wife is firmly established by the version of Laxman.

. Having gone through the evidence, we feel that the trial Court committed no error in arriving at the conclusion that all five circumstances enlisted in para 4 ante are firmly established by the prosecution.

. So far as the extra judicial confession is concerned, advocate Shri. Talkute specifically assailed the evidence of P.W.2 Sakharam. His argument to some extent is justified that P.W.2 Sakharam himself might not have accompanied the complainant Laxman, his uncle Shantaram and his brother Balu to the location. This is evident from the admission rendered by P.W.4 Balu that Sakharam was not with them when they proceeded to the location where dead body was lying. P.W.2 Sakharam accompanied these three persons, is a possibility which stands ruled out by the fact that Sakharam is Sarpanch of village Zap (place of the accused),

whereas the complainant and his relatives belong to different village Alemal. Two groups reaching towards the location separately is a stronger possibility. Although we are in agreement with the learned advocate for the appellant in respect of his submission that the possibility of Sakharam having proceeded to the location with the remaining three witnesses is doubtful, the fact remains that all four witnesses have visited the location where the dead body was lying.

. For the sake of argument, we ignore the evidence of Sarpanch Sakharam and we take into consideration the deposition of Laxman in order to trace out as to how the complainant and his relatives reached the location. According to Laxman at about 6.00 p.m. he was informed by Ashok Mahale that Rahubai was murdered in the forest by the accused and then he proceeded to the location. In fact during the course of cross examination of Laxman, the defence has brought on record some details which render considerable assistance to the prosecution. Laxman has admitted;

> "father of accused and some four to five persons were already present near the dead body when we reached there. I asked them the cause of death of Rahubai"

. Similarly, this fact was confirmed by Shantaram by deposing to the effect "there were about four to five persons near the dead body". Even P.W.4 Balu deposed thus;

> "We saw the dead body, we found injuries on her head, ear and neck Soma Paradhi i.e. father of the accused, village Sarpanch, village police Patil and two to three others were also present there. On enquiry Soma Paradhi told me that accused had killed his wife."

. The fact that the party from village Zap had reached the location where the dead body of Rahubai was lying, even before the father of deceased and his relatives could reach there, in our considered view; is a very important and strong circumstance. It can safely be inferred that the people from village Zap had learnt about the death of Rahubai even before her

father and his relatives could know about it. There could be no other reason why father of the accused and office bearers of Zap Gram Panchayat had reached near dead body. We cannot rule out a possibility that this must be as a result of one more extra judicial confession, may be to the father; by the accused, which cannot come on record because the father is not examined as a witness for the prosecution, obviously because he would not have supported the prosecution against his son had he been forced to the witness box. This circumstance, certainly confirms the prosecution story and accused must be wearing the blood stained clothes when he reached home. This circumstance is capable of creating a possibility of extra judicial confession to the father.

. When we drew attention of the learned advocate to these details, the learned advocate tried to explain the same by submitting that the villagers might have gone in search of Rahubai, because she did not return home.

. It is at this stage, we are required to reconsider the evidence of Laxman especially about "last scene

together". Although the accused has come out with a case that deceased had gone to the forest for collecting firewood, he has not come out with a specific version that he had reached home with his wife, (victim). He is not specific whether they travelled back by bus or they walked through forest. He is not specific whether the wife departed for collecting fire wood after they alighted from the bus or they diverted while walking home through forest. Both the victim Rahubai and accused being together right from departure of the couple from the place of Laxman, it was obligatory on the accused, in the light of Section 106 of Indian evidence Act; to explain as to when did the victim Rahubai parted with his company. Accused has not discharged this responsibility even by specific statement during the course of his statement recorded under Section 313 of Cr.P.C. 1973.

. Although it appears that the defence has blamed the prosecution for non examination of Soma Paradhi, we are unable to agree with the defence on that count. Soma Paradhi being the father of the accused, the prosecution could not have expected him to render support in the case against his son. The possibility

suggested as an explanation, that the father of the accused and other villagers might have gone in search of Rahubai, is an unacceptable explanation in the light of natural course of conduct and in the light of fact situation of the case. In any case father of the accused had reached the location before the father of deceased. Father of deceased had reached there by 6.00 p.m. If the version of Sakharam P.W.2 is accepted, possibly they had reached at the location at about 3.30 p.m. The day 15th June, being close to the longest day of the year i.e. 22nd June, neither 3.30 p.m. nor 6.00 p.m. was Sun-set time. Therefore, the possibility relied upon by the learned advocate for the appellant as his explanation does not exist. Nobody would go in search of a person, for not having returned home, before sunset. Such a possibility also stands ruled out from the fact that the accused/husband was not a member of either of the parties, if at all they had gone in search of missing Rahubai. We are, therefore, inclined to stick to our original inference that there is a possibility of extra judicial confession by the accused to his own father, as can be inferred from the fact that father of the accused had reached the location even before the father of victim.

. So far as the extra judicial confession is concerned, even if we ignore the evidence of Sakharam because of infirmities pointed out by the learned advocate for the appellant, the father of victim and his both relatives have claimed that they enquired the accused and he confessed to have murdered his wife. The possibility of extra judicial confession to his own father by the accused which we have discussed above, supports the possibility of accused having made an extra judicial confession also to father of the victim. By the time father of the victim approached the accused, the fact of murder of Rahubai by the accused was known to the entire village of Zap, because even villagers were involved in search of the dead body by that time. No doubt the extra judicial confession is required to be accepted with a caution. Ordinarily, those would be made to the persons in confidence, persons who can save the accused. And if this is taken into consideration, the probability of extra judicial confession to his own father further strengthens. Probability of extra judicial confession to father in law, may be due to frustration as a result of knowledge of occurrence to villagers also survives.

The deposition of father-in-law and relatives that accused made extra judicial confession to them, therefore, need not be disbelieved merely because they were his relations only by marriage and not by blood.

8. Advocate Shri. Talkute has placed reliance on the observations of the Supreme Court in the case of **Chandrakant Chimanlal Desai Vs. State of Gujrat, 1992 (1) SCC 473** and especially those observations which are borrowed by the Hon'ble Court in para 5 from the case of **Kashmira Singh V. State of M.P.**, the observations are as follows:-

> "The confession of an accused person is not evidence in the ordinary sense of the term as defined in Section 3. It cannot be made the foundation of a conviction and can only be used in support of other evidence. The proper way is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be

prepared to accept."

. We do not think that the observations of the Supreme Court are in any way helpful to the appellant. This is because although the trial court has laid emphasis upon the extra judicial confession, the same is not the sole foundation for conviction and the case is dealt with as the case based on five circumstances, extra judicial confession being one of those circumstances.

. In the matter of **Kansa Behera Vs. State of Orissa, AIR 1987 SC 1507,** the report of Serologist recorded that clothes were stained with human blood but the blood group was not determined. It was held that no reliance would be placed on the circumstance. In the matter at hands, we have already pointed out that the prosecution is handicapped because of report of laboratory is not received but the circumstance that his clothes were stained with blood was put to the accused in the form of question and it is not his case that he had suffered certain injury and those were stains of his own blood, which were seen on his clothes by the witnesses.

. Although the Medical Officer has admitted that such injuries can be caused by fall on stone from a height, on reference to panchanama of the location, which is a place in forest with a slope there does not appear to be such a situation that the victim could have collapsed from considerable height. Moreover, on reference to post mortem notes, it can be seen that all the injuries suffered by the victim are on the head. If the victim had fallen from a considerable height there could have been injuries on other portions of the body and those would not have been concentrated only on and around the skull.

. To sum up, we feel that the prosecution has firmly established the following circumstances;-

i) Last seen together;

ii) Motive;

iii) Extra judicial confession; and

iv) The possibility of extra judicial confession to his own father by the accused.

. We feel that the cumulative effect of the circumstances taken together is sufficient to require the accused to explain facts within his special knowledge, by virtue of Section 106 of Indian Evidence Act, which he has not done. We therefore, feel that the trial Court committed no error in arriving at a conclusion that it must be accused/husband and none else who committed murder of victim Rahubai.

9. For the reasons, appeal succeeds partly. We quash and set aside the conviction and sentence of the appellant Mahadu Soma Paradhi so far as it relates to Section 498-A of I.P.C. The fine amount deposited on that count, if any, shall be refunded to the appellant.

. We dismiss the appeal so far as it challenged the finding of guilty, conviction and sentence for the offence punishable under Section 302 of I.P.C. We confirm the finding and sentence on that count as imposed by the learned Sessions Judge.

. Registrar (Judicial) shall ensure that a certified

copy of this judgment, is furnished to the appellant accused in person, free of costs and through prison authorities.

. Advocate Shri. Talkute was appointed to prosecute the appeal, at the cost of State, we quantify his professional charges at Rs.2,500/-.

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